

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA

Alexandria Division

UNITED STATES OF AMERICA )

)

v. )

CRIMINAL NO. 03-

048-A

)

CUONG GIA LE, )

)

Hon. T.S. Ellis, III

Defendant. )

**PLEA AGREEMENT**

Paul J. McNulty, United States Attorney for the Eastern District of Virginia, James L. Trump, Kimberly R. Pedersen, and Michael Leiter, Assistant United States Attorneys, the defendant, CUONG GIA LE, and the defendant's counsel have entered into an agreement pursuant to Rule 11 of the Federal Rules of Criminal Procedure. The terms of the agreement are as follows:

1. **Offenses and Maximum Penalties**

The defendant agrees to plead guilty to Counts 1, 6, 8, 9, 10, 12, 14, 26, and 27 of the Fifth Superseding Indictment.

Count 1 charges the defendant with having participated in the conduct of a criminal enterprise through a pattern of racketeering activity (RICO), in violation of Title 18, United States Code, Section 1962(c). The maximum penalties for this offense are life imprisonment, a fine of \$250,000, criminal forfeiture, full restitution, a special assessment, and five (5) years of supervised release.

Count 6 charges the defendant with conspiracy to commit murder in aid of racketeering activity, in violation of Title 18, United States Code, Section 1959(a)(5). The maximum

penalties for this offense are ten (10) years imprisonment, a fine of \$250,000, full restitution, a special assessment, and three (3) years of supervised release.

Counts 8 and 9 charge the defendant with murder in aid of racketeering activity, in violation of Title 18, United States Code, Section 1959(a)(1). The maximum penalties for these offenses are life imprisonment, a fine of \$250,000, full restitution, a special assessment, and five (5) years of supervised release.

Count 10 charges the defendant with attempted murder in aid of racketeering activity, in violation of Title 18, United States Code, Section 1959(a)(5). The maximum penalties for this offense are ten (10) years imprisonment, a fine of \$250,000, full restitution, a special assessment, and three (3) years of supervised release.

Count 12 charges the defendant with assault with a dangerous weapon in aid of racketeering activity, in violation of Title 18, United States Code, Section 1959(a)(6). The maximum penalties for this offense are three (3) years imprisonment, a fine of \$250,000, full restitution, a special assessment, and one (1) year of supervised release.

Count 14 charges the defendant with conspiracy to affect commerce by robbery, in violation of Title 18, United States Code, Section 1951. The maximum penalties for this offense are twenty (20) years in prison, a fine of \$250,000, full restitution, a special assessment, and three (3) years of supervised release.

Counts 26 and 27 charge the defendant with murder in the course of a firearms offense, in

violation of Title 18, United States Code, Sections 924(c) and (j)(1). The maximum penalties for these offenses are life imprisonment (to be served consecutively to any other term of imprisonment), a fine of \$250,000, full restitution, a special assessment, and five(5) years of supervised release. The defendant understands that the supervised release terms are in addition to any prison term the defendant may receive, and that a violation of a term of supervised release could result in the defendant being returned to prison for the full term of supervised release.

**II. Factual Basis for the Plea**

The defendant will plead guilty because the defendant is in fact guilty of the offenses charged in Counts 1, 6, 8, 9, 10, 12, 14, 26, and 27 of the Fifth Superseding Indictment. The defendant admits the facts set forth in the statement of facts filed with this plea agreement and agrees that those facts establish guilt of the offenses charged in these counts beyond a reasonable doubt. The statement of facts, which is hereby incorporated into this plea agreement, constitutes a factual stipulation for purposes of Section 1B1.2(a) of the Sentencing Guidelines.

**III. Assistance and Advice of Counsel**

The defendant is satisfied that his attorneys have rendered effective assistance. The defendant understands that by entering into this agreement, he surrenders certain rights as provided in this agreement. The defendant understands that the rights of criminal defendants include the following:

- A. the right to plead not guilty and to persist in that plea;
- B. the right to a jury trial;

C. the right to be represented by counsel – and if necessary have the court appoint counsel – at trial and at every other stage of the proceedings; and

D. the right at trial to confront and cross-examine adverse witnesses, to be protected from compelled self-incrimination, to testify and present evidence, and to compel the attendance of witnesses.

**IV. Waiver of Right to Jury Trial on Sentencing Factors.**

The defendant, by entering this plea, also waives the right to have facts that determine the offense level or criminal history category under the Sentencing Guidelines (including facts or other guideline provisions that support any specific offense characteristic or other enhancement or adjustment) (1) charged in the indictment, (2) proven to a jury, or (3) proven beyond a reasonable doubt. The defendant explicitly consents to be sentenced pursuant to the applicable Sentencing Guidelines, to have his sentence based on facts to be established by a preponderance of the evidence before the sentencing judge, and to allow the Court to consider any reliable evidence without regard to its admissibility at trial. The defendant explicitly acknowledges that his plea to the offenses charged in Counts 1, 6, 8, 9, 10, 12, 14, 26, and 27 authorizes the Court to impose any sentence that is authorized by the Sentencing Guidelines up to and including the maximum sentence set forth in the United States Code. The defendant also waives all challenges to the constitutionality of the Sentencing Guidelines.

**V. Guideline Stipulations**

The United States and the defendant stipulate and agree to the guideline factors as set forth in Attachment A, which is incorporated into and made part of this agreement. The defendant understands that Sections 3D1.1 through 3D1.5 of the Sentencing Guidelines provide for an increase in his offense level for multiple counts of conviction and that at sentencing he will most likely receive such an increase in his combined offense level pursuant to these provisions. The United States and the defendant have not reached any agreement regarding the application of these guideline provisions.

The defendant further understands that pursuant to Chapter Four, Part A, of the Sentencing Guidelines, the Court must determine his criminal history category. The United States and the defendant have not reached any agreement regarding his criminal history category.

The defendant further understands that he will receive a sentence of life imprisonment on Count 8 and a sentence of life imprisonment on Count 9. The defendant further understands that, under the Sentencing Guidelines, he most likely will receive sentences of life imprisonment on Counts 1, 26, and 27.

The parties further stipulate and agree that the defendant has assisted the government in the investigation and prosecution of his own misconduct by timely notifying authorities of his intention to enter a plea of guilty, thereby permitting the government to avoid preparing for trial and permitting the government and the Court to allocate their resources efficiently. If the defendant qualifies for a two-level decrease in offense level pursuant to U.S.S.G. § 3E1.1(a), and the offense level prior to the operation of that subsection is a level 16 or greater, the government agrees to file, pursuant to 18 U.S.C. § 994 and U.S.S.G. § 3E1.1(b), a motion prior to sentencing for an additional one-level decrease in the defendant's offense level.

The defendant understands that these stipulations and agreements as to guideline factors are not binding on the Probation Office or the Court.

#### **VI. Role of the Court and the Probation Office**

The defendant understands that the Court has jurisdiction and authority to impose any sentence within the statutory maximum described above but that the Court will determine the defendant's actual sentence in accordance with the statutes of conviction

and the Sentencing Guidelines and Policy Statements. The defendant understands that the Court has not yet determined a sentence and that any estimate of the probable sentencing range under the sentencing guidelines the defendant may have received from the defendant's counsel, the United States, or the Probation Office, is a prediction, not a promise, and is not binding on the United States, the Probation Office, or the Court. The United States makes no promise or representation concerning what sentence the defendant will receive, and the defendant cannot withdraw a guilty plea based upon the actual sentence. Notwithstanding the foregoing, the parties agree that there exists no aggravating or mitigating circumstance of a kind, or to a degree, not adequately taken into consideration by the Sentencing Commission in formulating the Guidelines that should result in a sentence different from the range determined by the Court. Accordingly, the parties agree not to seek or support any departure from or sentence outside of the applicable guideline range for any reason not set out explicitly in this agreement.

## **VII. Waiver of Appeal and Review**

The defendant also understands that Title 18, United States Code, Section 3742 affords a defendant the right to appeal the sentence imposed. Nonetheless, the defendant knowingly waives the right to appeal the conviction and any sentence within the maximum provided in the statute of conviction (or the manner in which that sentence was determined) on the grounds set forth in Title 18, United States Code, Section 3742 or on any ground whatsoever, in exchange for the concessions made by the United States in this plea agreement. This agreement does not affect the rights or obligations of the United States as set forth in Title 18, United States Code, Section 3742(b). The

defendant also hereby waives all rights, whether asserted directly or by a representative, to request or receive from any department or agency of the United States any records pertaining to the investigation or prosecution of this case, including without limitation any records that may be sought under the Freedom of Information Act, Title 5, United States Code, Section 552, or the Privacy Act, Title 5, United States Code, Section 552a.

**VIII. Special Assessment**

Before sentencing in this case, the defendant agrees to pay a mandatory special assessment of one hundred dollars (\$100.00) per count of conviction, for a total of nine hundred dollars (\$900).

**IX. Payment of Monetary Penalties**

The defendant understands and agrees that, pursuant to Title 18, United States Code, Section 3613, whatever monetary penalties are imposed by the Court will be due and payable immediately and subject to immediate enforcement by the United States as provided for in Section 3613. Furthermore, the defendant agrees to provide all of his financial information to the United States and the Probation Office and, if requested, to participate in a pre-sentencing debtor's examination. If the Court imposes a schedule of payments, the defendant understands that the schedule of payments is merely a minimum schedule of payments and not the only method, nor a limitation on the methods, available to the United States to enforce the judgment. If the defendant is incarcerated, the defendant agrees to participate in the Bureau of Prisons' Inmate Financial Responsibility Program, regardless of whether the Court specifically directs participation or imposes a schedule of payments.

**X. Restitution for Offense of Conviction**



The defendant agrees to the entry of a Restitution Order for the full amount of the victims' losses in an amount to be determined by the Court at sentencing.

**XI. Immunity from Further Prosecution in this District**

The United States will not further criminally prosecute the defendant in the Eastern District of Virginia for the specific conduct described in the indictment and statement of facts. The United States further agrees that the United States will not further criminally prosecute the defendant in the Eastern District of Virginia for any additional criminal activity currently known to the United States. The United States agrees that the United States will not prosecute the defendant in the Eastern District of Virginia for any additional criminal activity currently unknown to the United States which the defendant truthfully reveals to the government as part of his cooperation as described in paragraph 13, below, except for any criminal activity involving murder or conspiracy to commit murder currently unknown to the United States.

**XII. Dismissal of Other Counts**

As a condition of the execution of this agreement and the Court's acceptance of the defendant's plea of guilty, the United States will move to dismiss the remaining counts of the indictment (Counts 2, 3, 4, 5, 7, 11, 13, 17, 18, 19, 23, and 25) against this defendant.

**XIII. Defendant's Cooperation**

The defendant agrees to cooperate fully and truthfully with the United States, and provide all information known to the defendant regarding any criminal activity as requested by the government. In that regard:

A. The defendant agrees to testify truthfully and completely at any grand juries, trials or other proceedings.

B. The defendant agrees to be reasonably available for debriefing and pre-trial conferences as the United States may require.

C. The defendant agrees to provide all documents, records, writings, or materials of any kind in the defendant's possession or under the defendant's care, custody, or control relating directly or indirectly to all areas of inquiry and investigation.

D. The defendant agrees that, upon request by the United States, the defendant will voluntarily submit to polygraph examinations to be conducted by a polygraph examiner of the United States' choice.

E. The defendant agrees that the Statement of Facts is limited to information to support the plea. The defendant will provide more detailed facts relating to this case during ensuing debriefings.

F. The defendant is hereby on notice that the defendant may not violate any federal, state, or local criminal law while cooperating with the government, and that the government will, in its discretion, consider any such violation in evaluating whether to file a motion for a downward departure or reduction of sentence.

G. Nothing in this agreement places any obligation on the government to seek the defendant's cooperation or assistance.

**XIV. Use of Information Provided by the Defendant Under This Agreement**

The United States agrees not to use any truthful information provided pursuant to this agreement against the defendant in any other criminal prosecution against the defendant in the Eastern District of Virginia, except for a prosecution for crimes of violence involving murder or conspiracy to murder currently unknown to the United States. Pursuant to Section 1B1.8 of the Sentencing Guidelines, no truthful information that the defendant provides pursuant to this agreement will be used to enhance the defendant's guidelines range. The United States will bring this plea agreement and the full extent of the defendant's cooperation to the attention of other prosecuting offices if requested. Nothing in this plea agreement, however, restricts the Court's or Probation Office's access to information and records in the possession of the United States. Furthermore, nothing in this agreement prevents the government in any way from prosecuting the defendant should the defendant provide false, untruthful, or perjurious information or testimony or from using information provided by the defendant in furtherance of any forfeiture action, whether criminal or civil, administrative or judicial.

**XV. Prosecution in Other Jurisdictions**

The United States Attorney's Office for the Eastern District of Virginia will not contact any other state or federal prosecuting jurisdiction and voluntarily turn over truthful information that the defendant provides under this agreement to aid a prosecution of the defendant in that jurisdiction. Should any other prosecuting jurisdiction attempt to use truthful information the defendant provides pursuant to this agreement against the defendant, the United States Attorney's Office for the Eastern District of Virginia agrees, upon request, to contact that jurisdiction and ask that jurisdiction to abide by the

immunity provisions of this plea agreement. The parties understand that the prosecuting jurisdiction retains the discretion over whether to use such information.

The U.S. Attorney's Office for Eastern District of Virginia represents that it has contacted the Fairfax County, Virginia, Commonwealth Attorney's Office; the Arlington County, Virginia, Commonwealth Attorney's Office; and the Montgomery County, Maryland, State Attorney's Office and those jurisdictions have agreed to abide by the terms of this agreement.

**XVI. Defendant Must Provide Full, Complete and Truthful Cooperation**

This plea agreement is not conditioned upon charges being brought against any other individual. This plea agreement is not conditioned upon any outcome in any pending investigation. This plea agreement is not conditioned upon any result in any future prosecution which may occur because of the defendant's cooperation. This plea agreement is not conditioned upon any result in any future grand jury presentation or trial involving charges resulting from this investigation. This plea agreement is conditioned upon the defendant providing full, complete and truthful cooperation.

**XVII. Motion for a Downward Departure or Reduction of Sentence**

The parties agree that the United States reserves the right to seek any departure from the applicable sentencing guidelines, pursuant to Section 5K1.1 of the Sentencing Guidelines and Policy Statements, or any reduction of sentence pursuant to Rule 35(b) of the Federal Rules of Criminal Procedure, if, in its sole discretion, the United States determines that such a departure or reduction of sentence is appropriate.

**XVIII. The Defendant's Obligations Regarding Assets Subject to Forfeiture**

The defendant agrees to identify all assets over which the defendant exercises or exercised control, directly or indirectly, within the past five years, or in which the defendant has or had during that time any financial interest. The defendant agrees to take all steps as requested by the United States to obtain from any other parties by any lawful means any records of assets owned at any time by the defendant. The defendant agrees to undergo any polygraph examination the United States may choose to administer

concerning such assets and to provide and/or consent to the release of the defendant's tax returns for the previous five years. Defendant agrees to forfeit to the United States all of the defendant's interests in any asset of a value of more than \$1000 that, within the last five years, the defendant owned, or in which the defendant maintained an interest, the ownership of which the defendant fails to disclose to the United States in accordance with this agreement.

**XIX. Forfeiture Agreement**

The defendant agrees to forfeit all interests in any racketeering-related asset that the defendant owns or over which the defendant exercises control, directly or indirectly, as well as any property that is traceable to, derived from, fungible with, or a substitute for property that constitutes the proceeds of this RICO offense. The defendant further agrees to waive all interest in the assets in any administrative or judicial forfeiture proceeding, whether criminal or civil, state or federal. The defendant agrees to consent to the entry of orders of forfeiture for such property and waives the requirements of Federal Rules of Criminal Procedure 32.2 and 43(a) regarding notice of the forfeiture in the charging instrument, announcement of the forfeiture at sentencing, and incorporation of the forfeiture in the judgment. The defendant understands that the forfeiture of assets is part of the sentence that may be imposed in this case.

**XX. Waiver of Further Review of Forfeiture**

The defendant further agrees to waive all constitutional and statutory challenges in any manner (including direct appeal, habeas corpus, or any other means) to any forfeiture carried out in accordance with this Plea Agreement on any grounds, including that the forfeiture constitutes an excessive fine or punishment. The defendant also waives

any failure by the Court to advise the defendant of any applicable forfeiture at the time the guilty plea is accepted as required by Rule 11(b)(1)(J). The defendant agrees to take all steps as requested by the United States to pass clear title to forfeitable assets to the United States, and to testify truthfully in any judicial forfeiture proceeding. The defendant understands and agrees that all property covered by this agreement is subject to forfeiture as any property constituting, or derived from, any proceeds which the person obtained, directly or indirectly, from racketeering activity in violation of 18 U.S.C. § 1962.

**XXI. Other Agreements**

The United States agrees to immunize Kim Nguyen for any criminal activity in which she may have been engaged during her relationship with the defendant, provided that she makes herself available for and completes a proffer session with the government pursuant to the terms and conditions of a proffer agreement executed on October 6, 2004, and provided that she executes a cooperation agreement with the United States in which she agrees to cooperate fully and completely with the government.

The United States and the defendant agree to withdraw all appeals relating to this case now pending before the United States Court of Appeals for the Fourth Circuit.

Upon the acceptance of the defendant's guilty pleas, the United States agrees to withdraw its notice and amended notice to seek the death penalty against the defendant.

**XXII. Breach of the Plea Agreement and Remedies**

This agreement is effective when signed by the defendant, the defendant's attorney, and an attorney for the United States. The defendant agrees to entry of this plea agreement at the date and time scheduled with the Court by the United States (in

consultation with the defendant's attorneys). If the defendant withdraws from this agreement, or commits or attempts to commit any additional federal, state or local crimes, or intentionally gives materially false, incomplete, or misleading testimony or information, or otherwise violates any provision of this agreement, then:

A. The United States will be released from its obligations under this agreement, including any obligation to seek a downward departure or a reduction in sentence. The defendant, however, may not withdraw the guilty plea entered pursuant to this agreement;

B. The defendant will be subject to prosecution for any federal criminal violation, including, but not limited to, perjury and obstruction of justice, that is not time-barred by the applicable statute of limitations on the date this agreement is signed. Notwithstanding the subsequent expiration of the statute of limitations, in any such prosecution, the defendant agrees to waive any statute-of-limitations defense; and

C. Any prosecution, including the prosecution that is the subject of this agreement, may be premised upon any information provided, or statements made, by the defendant, and all such information, statements, and leads derived therefrom may be used against the defendant. The defendant waives any right to claim that statements made before or after the date of this agreement, including the statement of facts accompanying this agreement or adopted by the defendant and any other statements made pursuant to this or any other agreement with the United States, should be excluded or suppressed under Fed. R. Evid. 410, Fed. R.



Crim. P. 11(f), the Sentencing Guidelines or any other provision of the Constitution or federal law.

Any alleged breach of this agreement by either party shall be determined by the Court in an appropriate proceeding at which the defendant's disclosures and documentary evidence shall be admissible and at which the moving party shall be required to establish a breach of the plea agreement by a preponderance of the evidence. The proceeding established by this paragraph does not apply, however, to the decision of the United States whether to file a motion based on "substantial assistance" as that phrase is used in Rule 35(b) of the Federal Rules of Criminal Procedure and Section 5K1.1 of the Sentencing Guidelines and Policy Statements. The defendant agrees that the decision whether to file such a motion rests in the sole discretion of the United States.

**XXIII. Nature of the Agreement and Modifications**

This written agreement constitutes the complete plea agreement between the United States, the defendant, and the defendant's counsel. The defendant and his attorneys acknowledge that no threats, promises, or representations have been made, nor agreements reached, other than those set forth in writing in this plea agreement, to cause the defendant to plead guilty. Any modification of this plea agreement shall be valid only as set forth in writing in a supplemental or revised plea agreement signed by all parties.

PAUL J. MCNULTY  
UNITED STATES ATTORNEY

By:  
James L. Trump  
Kimberly R. Pedersen  
Michael Leiter  
Assistant United States Attorney